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THE BLIND CAN JUDGE FACTS

by THE HON. GILBERT RAMIREZ

[This address was delivered July 7, 1977, in New Orleans, at the 37th Annual Convention of the NFB. Judge Ramirez is a member of the New York State Supreme Court.]

You may be wondering why in 1977 at the National Convention of the organized blind there is still a need to reaffirm the truth of the statement: The blind can judge the facts. In my own state, the so-called Empire State of New York in this regard could be more aptly described as the Bird-brain State, since blind New Yorkers are still barred from jury service. The reason for this sad state of affairs in New York, as in many other states, is the fact that there are still people who believe that the blind are nothing more than coin-operated self-service dispensers of absolution for the sins of the sighted. Drop a coin in a blind person's cup, and you will be that much closer to your eternal reward. [Laughter]

Unfortunately, until the time I was assigned this topic, I was one of those people like most Americans who believed that jury service was one of the few things in life that I could very well do without. So that, in 1966 I was blithely unconcerned when Professor Ed Lewinson was frustrated in his attempt to do his civic duty. Little did I know at the time that Professor Lewinson was waging his courageous battle not so much for himself—for after all, jury service is far from being an exclusive club in New York. The few people who are excluded from that service are felons, the infirm, and the decrepit. The blind have been added to this list only by judicial construction or misconstruction of the statute.

Professor Lewinson was fighting for you, and for human dignity, and especially, for me. For barely two years later, in 1968, my name was submitted to the screening committees of the various bar associations for consideration for family court judge. We had never had a blind judge in the history of New York City, and the question that was uppermost in the minds of the members of the New York bar and bench was whether a blind person could occupy such a sensitive position, dealing with family matters and juvenile delinquency, when the New York Court of Appeals had ruled that the blind were not even qualified to sit as jurors, with eleven other sighted jurors, to determine simple questions of fact.

Fortunately for me, there is nothing in the New York judiciary law that can be misconstrued to disqualify a blind person from sitting as a judge. The various bar associations, however, were not interested in hearing about the fact that, blind as I am, I worked as a dictaphone operator for the City of New York and was so employed when I studied law at night. Blind as I am, I completed the four-year night course in only three years, and I passed the twelve-and-a-half-hour bar exam without any difficulty. And they were not interested to know that in the eleven years since my admission to the bar in 1957, I had become a highly successful trial lawyer, so much so that I had to bring two other lawyers into my firm to handle the ever-increasing caseload. And that, blind as I am, I had been elected to represent over 100,000 fellow New Yorkers in the New York Legislature. And that I had been elected by over 300,000 fellow New Yorkers as a delegate, in 1967, to write a new constitution for the State of New York.

All that the various associations of the bar wanted to know was: How did a blind person presume to be a judge when our own appellate court had decided, in 1966, that he was not even qualified to judge the facts as a juror. Consider, if you will, my dilemma: How was I to explain in less than 30 minutes to these well-intentioned, well-meaning, civic-minded, and dismally informed members of the bar all about the birds, the bees, and the blind?

Please, further consider that these lawyers were the unwitting tools of a society that has been conditioned for thousands of years to believe that the blind are a helpless and a hopeless lot whose only mission in life is to remind the more fortunate that there, but for the grace of God, go they. I began by telling them that whenever I prepared a witness for trial I would always begin and end by instructing that witness to be sure he was well-dressed when he appeared in court. I did so because I knew that all too often both judge and jury were more concerned with the sartorial splendor of the witness than with the relevance of his testimony. I assured them that a well-dressed perjurer lies just as prettily in the buff.

I was then asked to explain how I would deal with exhibits, diagrams, photos, fingerprints, signatures, and all other real evidence. I explained that all too often exhibits are nothing more than props used by lawyers for their dramatic effect in the eyes of the jury. Besides, I had yet to hear of a diagram that was so complex that it could not be readily and fully described verbally.

No one ever seems to be troubled by the fact that color photos are always presented to a jury with total unconcern as to whether the jurors are color-blind. Besides, any lawyer who submits fingerprints or signatures or X-rays to 12 jurors or to a judge for their viewing without strong supporting expert testimony is merely inviting a decision by 12 fools, in the case of the jury, and by one single fool, in the case of a judge.

And then came the inevitable question: How could I, blind as I am, determine the credibility of a witness if I could not visually observe the manner and demeanor of the witness on the stand? I explained as diffidently as I knew how that I would apply the same tests that I use in my everyday affairs to determine the reliability or unreliability of statements made to me by others. The fact that for years I had dealt successfully with judges, prosecutors, lawyers, plaintiffs, defendants, and clients and witnesses should have been indicative of something. And the fact that I have recruited dozens of political workers and turned them into a winning political organization which produced four electoral victories for me without a single defeat should have been proof enough that I was a reasonably good judge of character and sincerity in others. And in the dog-eat-dog world of politics, where no mercy at all is shown to losers, I certainly had been more successful than most in telling the good guys from the bad guys and in separating fact from fiction.

I reminded them that it would be difficult for anyone to pull the wool over my eyes. [Applause]

Judges of the fact are all too often carried away by their belief that seeing is believing. Tears are often more an expression of joy or anger than sorrow; and a nervous witness sometimes does tell the truth, while cool, well-composed witnesses have been known to tell a fib or two.

You may recall a university study some years ago when a full trial was acted out for the benefit of a group of students, except for the fact that the testimony of the plaintiff and the defendant was read to the jury. And then the jury was presented with pictures of the plaintiff and the defendant. The final vote of the jury was two-to-one in favor of the pretty plaintiff. Another group of students was presented with the exact same case except that this time the pictures were switched. The second jury decided, again by a two-to-one margin, for the pretty woman, who was now the defendant in the same action. The long and the short of it is that the blind, very much like anyone else, apply the same tests they use in their everyday affairs to determine fact from fiction. Some of them are good at it, and some not so good. An English judge of 400 years ago grandly announced that the law is the perfection of reason. The truth is that juries often arrive at very sound decisions by rather illogical routes.

I served seven years on the family court bench, until my election to the supreme court in 1975. Over the course of those nine years I have been called upon to judge literally tens of thousands of facts,

and the only reason why a hue and cry has not been raised about my lack of sight is the fact that I was lucky enough to have been found qualified by the various bar associations and to have been endorsed by the prestigious *New York Times.* If that had not been the case, can you imagine the howls of self-righteous anger from every losing litigant about the fact that I had decided the case against them only because of my inability to view their carefully detailed diagrams or their professionally prepared color photos.

I don't know of any legislative body that has specifically disqualified the blind from jury service. But the requirement that one be possessed of one's natural faculties in order to qualify for jury service has been misconstrued consistently by the appellate courts to mean "physical faculties"; that is, the sense of sight. Whereas that same phrase, "natural faculties," could more readily be construed to mean rational or intellectual faculties. [Applause]

Obviously our appellate judges have an astonishing talent for reading into the law all manner of things that the legislators who enacted the law never even dreamed about. For instance, the phrase "natural faculties" first appeared in the New York State statute over 150 years ago. God only knows who the legislator was who first proposed this requirement as a qualification for jury service in England. Wherever he is, he must be laughing his head off to learn that some judges claim that what he really had in mind at the time was to disqualify the blind.

The fact is that there is no absolute knowledge. All information is imperfect. That is a human condition. The present law requires judges to direct juries to perform certain mental feats which are impossible to achieve except by trained lawyers. In fact, some of the rules of evidence are practically incomprehensible to anyone but a trained lawyer. The blind can judge the facts as well as anyone else. [Applause]

The NFB is proceeding methodically—last year, in the State of Washington; this year, in Oregon; next year, perhaps, in New York—to amend the relevant statute to bring it into line with the current condition of the blind, so that even our well-intentioned but silly judges will get the message. We know who we are and we will never go back. □

BLIND JUSTICE OR JUSTICE FOR THE BLIND: FUTURE DIRECTIONS IN CIVIL RIGHTS—DUE PROCESS, EQUAL PROTECTION, AND STATUTORY LAW

by JONATHAN M. STEIN

[This address was delivered in New Orleans, July 7, 1977, at the 37th Annual Convention of the NFB. Mr. Stein is Chief of Law Reform at Community Legal Services, Philadelphia.]

The 1960's constituted a great watershed in the legal development of civil rights of minority groups, of which the blind movement was and is an integral part. A watershed that is putting this country finally, and perhaps a hundred years late, on the road to making this an egalitarian society.

These legal developments from the 1960's have a number of lessons for us today as we look into the 70's and 80's. The Gurmankin case which I litigated in Philadelphia illustrates a number of these lessons for us.

As many of you know, Judy Gurmankin was a blind school teacher in Philadelphia who graduated from Temple University in 1968; and from 1968 on through the mid 1970's was completely barred from being able to teach sighted students in any public school in Philadelphia. She wasn't even allowed to take the teachers examination that the Philadelphia school system gave.

Although she made some efforts in the late 60's, by the early 70's she had almost given up all hope of ever being able to teach in the Philadelphia system, or for that matter, pursuing a teaching career anyplace. It was a lawsuit that was begun in 1974 and was ultimately successful in 1976 that struck down the discriminatory bar in Philadelphia—that I am sure exists in many other cities in this country—against blind teachers teaching sighted students.

The case is important because it builds upon civil rights precedents that had been established earlier to protect minority groups; and I think it shows a certain alliance of interests which all minority groups share in terms of developing laws and civil rights protections that could protect all minority groups.

Among the bases which the judge used—and this was a federal court in Philadelphia and a decision that was affirmed by a court of appeals—a higher appellate court—which establishes it as good precedent all over the country. The bases for the decision included the U.S. Constitution which, in its fourteenth amendment, protects us against arbitrary actions of any government agency—any state or local government agency. And under the due process clause which protects life, liberty, and property of individuals, [the court] held that an agency cannot irrebutably assume that just because someone is blind, that person is incapable of undertaking a particular job or activity. That's exactly what the Philadelphia school system assumed: Their assumption was the inability of Judith Gurmankin to teach sighted students English in the Philadelphia school system.

The Gurmankin case is also significant because it was the first case which used the new section 504 of the Rehabilitation Act of 1973 to enforce a new civil right that Congress specifically created for handicapped people. This illustrates that one does not necessarily have to rely on the enforcement abilities of HEW, that one can in certain circumstances go directly into court and enforce the right that Congress established in 504 against discrimination by any agency receiving federal funds, as every school system in this country probably does. What the Gurmankin experience establishes, and what 504 establishes, is that now there are real rights out there which are in the Constitution, that are in a federal statute covering the entire country, which people can take advantage of, and should and must take advantage of.

What I think is left unclear in these early legal developments are the remedies and the enforcement mechanisms to make these rights, which are on paper, real. You can have all the rights in the world on paper—whether they are in the Constitution, or on statute books, or in court decisions—but unless you have the agencies out there to go fighting, unless you have people out there to go fighting for themselves, and unless you have real remedies for discrimination, that paper isn't going to be worth the paper it's printed on.

The lessons to be learned for future actions are the following: Justice for the blind will only really be justice for the blind if there is a redistributive justice; that is, where income, jobs, and services are redistributed in our society to make up for past discrimination. To illustrate this, it is not sufficient merely to be able to participate in a race, when that race has been going on for years and years. That's not justice. To fully participate and to be at the starting line with everyone else that has been in that race for years, it means that additional steps have to be taken, compensatory steps have to be taken to make sure that true equality is achieved.

Now in the context of the law, this often means a focus on remedies. It's easy for courts to say you have a right not to be discriminated against. It's a more difficult thing for a court to wrestle with, or a legislature or a Congress to wrestle with: "Well, what are we going to do about it?" What remedies are going to be available to make sure that full justice is achieved? For example, in the employment area, one has to look to some of the law that is being

developed under title VII of the 1964 Civil Rights Act, where race and sex discrimination are prohibited. There the Equal Employment Opportunity Commission (the EEOC) has developed law which even this Supreme Court—the Berger Court—can't really undermine very much. I have to say "very much" because they are doing their job to undermine it a bit. But there is still good law out there that says that remedial steps have to be taken to cure the present effects of past discrimination. That means if an employer—a private employer or a government employer—has been discriminating, it means that not only must the employer hire that individual who is complaining, but he must also set up preferences, hiring quotas, and goals to ensure that other people who are the victims of discrimination get hired at the same time. The area of remedies is something that has to be addressed and it has to be addressed in a very vigorous way.

The Gurmankin case is still going on. That's one aspect of litigation—it almost never ends. Hopefully, you can get some benefits out of it during the course of it, and I think that's what the name plaintiff—Judy Gurmankin—has gotten out of it. She is now a full-time teacher of English in the Philadelphia school system.

But she is not stopping there, and there's a lesson to learn here. She's gotten her job, and she's getting a good salary now, but she's also insisting that other things be done by this federal court to make sure that the Philadelphia school system really changes, not just changes with respect to one person in a system where 15,000 teachers are employed.

Among the things she is insisting, some of them go to her own benefit, and those include not only a job for herself but a "make whole" remedy, which is the name given to make sure that someone is "made whole" again. She could have taught in the school system in 1970, and a federal court in Philadelphia—with the court of appeals affirming—has said she has to be given six years of seniority—full seniority as if she began in 1970. We're going to insist that she be given full back pay. We're going to teach the Philadelphia school system, and hopefully, every other employer in this country, that if they're going to discriminate, they're going to have to pay for it. For [Judith Gurmankin] that means full back pay, full interest, and every other health and fringe benefit that she would have had if she had begun teaching in 1970.

But in addition to that—and this brings me back to the need for affirmative action remedies—we're going to seek an affirmative action plan for all visually handicapped teachers so that preferences, quotas, and hiring goals will be established to hire other visually handicapped teachers in the Philadelphia school system. And we're not going to settle our suit until that is achieved.

That's one aspect of full justice for the blind. Another aspect is the idea of achieving institutional and class-wide relief. This goes back to the idea that full justice is not full justice unless it goes beyond the individual who happens to have either been aware of his or her legal rights, or had the luck to find a lawyer to pursue his or her claim. This is premised on the idea that any discrimination based on one's blindness, or for that matter, on one's race, or on one's sex, is discrimination against a class of everyone who is either blind or black or a woman. Any action one takes—whether it be in the court forums or in the legislature or on the picket lines—is an action which must be taken on behalf of a class of people.

Fortunately, the courts allow classes of people to bring lawsuits. Those are called class actions. When Judy Gurmankin sued, she brought a suit on behalf of herself and on behalf of all other blind teachers similarly situated, who could teach in the Philadelphia school system. I would like to urge the folks here, when they consider filing their administrative complaints with the Labor Department (under section 503 of the Rehab Act), or HEW (under section 504 of the Rehab Act)—and these, as you may know, need only be a letter, a written letter

to the regional office of Labor, or for HEW, I think their Washington Office for Civil Rights is taking complaints under 504.

When you do file these complaints with the federal agencies, or for that matter, with a state human rights agency, you should file them as a class action so that you seek not only to benefit that named individual who has been discriminated against, but you insist that that federal or state agency take all the steps necessary to change the system-wide practices of the social agency, employer, or what have you, who has been discriminating. Because it's going to be very easy for agencies, in a sense, to buy off people by giving one person a nice settlement. In fact, federal and state agencies, given their heavy caseloads and even, I'm sure, very well-meaning people, also would feel comfortable having individuals take something away that benefits them [so the agency can move] on to the next hundred cases they have to deal with.

It's going to take a lot of courageous people who are not going to be satisfied with, simply, individual relief and will insist that agencies provide relief for a whole class of people, and that they change entire employment practices or entire procedures of how an agency deals with a class of people. In the Gurmankin case that is part of our philosophy of the case. Other blind teachers will be hired.

We have challenged the testing procedures: Philadelphia used a very biased oral examination in which two teachers in the system put applicants through an oral examination. Interestingly enough, in 1974 the school system said, Okay, we'll give Judy the teachers exam. Go away and be happy now. Now you're equal; now you can take an exam like everyone else.

But lo and behold, the discrimination which was pretty gross before—which said that no blind teacher could even take the exam—took a more subtle form in the oral exam. There the oral examiners, through a series of biased questions and subtle assumptions about the blind teacher, continued the discrimination that the total bar illustrated earlier. Another form of subtle discrimination they practiced was that they gave extra score points on the teachers exam to teachers who [had done their student-teaching] in the Philadelphia school system. But they barred blind student teachers from teaching in the school system, so that any blind teacher like Judy Gurmankin did not get the extra seven score points which assured you of a very high position on the eligibility list. No one in the school system even saw this as discrimination; they saw it as sort of a historic occurrence that just happened.

As one pursues discrimination cases, one has to look very carefully and scrutinize every aspect of every admission requirement, every testing procedure, and the like, to ensure that they are in fact fair and job-related. That again is one thing which the 1964 Civil Rights Act and the EEOC are doing. Every employment test in the country is subject to that type of scrutiny, to ensure that every aspect of it is job-related. When there is discrimination, the burden is not on the *victim* of the discrimination to show that the test is not job-related. The *company* has to come forward—as the Supreme Court has held—to justify every aspect of that admissions or job-screening test.

What we're trying to do in this case is not only open up jobs but completely overhaul the testing procedures being used, and to make sure that, in addition, there is outreach, that there is advertising, that people are encouraged to apply to the Philadelphia school system. I would urge people here, if you know school teachers or if there are some school teachers among you, that you very definitely seek employment in the Philadelphia school system. And if you do, drop me a line or give me a call, because I'd be very interested in knowing of applicants who are applying there. We want to make sure that the right we've established is a real one and that there are real jobs that are opened up as a result of it.

Let me at this point state a few cautionary notes about the courts and lawyers. I'm

part of that system, so let me be as candid as I can. The courts and lawyers have been very significant in developing legal rights. Courts do give moral legitimacy to a cause, and courts also have the power to sock it to other institutions, whether they be mayors, governors, Presidents, or legislatures. But keep in mind the following problems in the legal process and with judges and lawyers:

(1) The legal process can be a very time-consuming and costly one. Lawsuits go on and on, and the immediate benefits are not always that apparent.

(2) The system is only as good as the judges; and judges aren't the most liberal or enlightened folks around.

(3) There can be too great a reliance on lawyers and lawsuits. Where lawyers take too much of a lead, there can be too great a dependency built up on them and too much can be taken away from building an organization and from utilizing political and direct action forums which can often get you a lot more than a single judge can. Courts and lawsuits can often become antiseptic forums where things have to be orderly and too quiet, and that is not always the best means of building an organization, of getting the word to the public, and of using the political processes.

To illustrate that, the 504 regulations took a good while getting out. Although there was a lawsuit filed in D.C. to help get them out, there was nothing like sitting in the offices of Secretary Califano to finally get those 504 regulations out. I think there is a good lesson there on the limitations of the legal process in terms of getting you what you want.

Let me say a word about the access to legal services. . . . Where can you get legal services and legal help? As I say, the rights that are on the statute books don't mean a thing if you can't enforce them. The first thing—and it may be an obvious thing—about legal services is that you don't always need lawyers. These rights that are out there are rights that folks who don't have a law degree can enforce. The gung-ho, aggressive advocates out here before me probably number a great many more than there are in any law school any place in this country. So I would urge that you don't always need a lawyer to bring your 504 complaint, to bring your 503 complaint, or even, for that matter, to bring a lawsuit, which in a federal court just requires 15 bucks and filing a piece of paper—which is called a complaint—stating that your rights have been violated.

But let me urge you that in litigation in particular, and even in 503 and 504 complaints, it may be of some value to get the advice of a lawyer or to retain a lawyer to bring a lawsuit. In that regard, let me suggest that one of the great untapped sources of legal help is the legal services movement, the legal services community of which I am a part. Right now there are over 10,000 full-time, salaried legal services lawyers who are free to low- and moderate-income people throughout the country, and who are available in most areas of the country to provide free legal services. There should be one in your area or your community, and perhaps a number of you have already tagged base with that local office.

Those offices are harried; they do have heavy caseloads; and like any other agency that you've had dealings with, you may have to take an aggressive stance with them, to demand that you be included in their service offering. They are offices that can provide advice, representation to individuals, law reform work (that is, if you're working on legislation in your particular state or on federal legislation, they could be of some assistance in drafting laws or in doing some lobbying with you). They can participate in test case litigation to open up doors that have been totally closed before. They can also provide organizational help to a local organization—advice on incorporating, or advice of a legal nature, or any kind that an organization needs. . . .

I would suggest, if you haven't tagged base with your local legal services or legal aid office—the name varies in different communities—you might want to sit down with the local director and explain the needs of

your organization or your community to that person and see what type of offering could be made. Perhaps an individual lawyer can be assigned to take responsibility to be accountable to your local group.

The issues on which legal services lawyers have done a fair bit of tough litigating and aggressive lawyering have been not only in the civil rights area that I've been talking about, but also in the area of SSI and Social Security. Right now there are a number of lawsuits: We've been working with and representing Ted Young's group in Philadelphia and Pennsylvania to sue the Social Security Administration for their failure to observe past income disregards for blind people in Pennsylvania. [These are disregards] that the Social Security Administration—in running the SSI system—has either intentionally or negligently (we think intentionally) failed to include in the SSI system.

There are some dynamite welfare rights lawyers in the legal services movement who are knowledgeable about SSI and Social Security law, and I would urge you to take advantage of them in whatever local community you live. They are also available to deal with housing problems, consumer issues, a host of family law problems; and they are there to be taken advantage of.

If you are also looking elsewhere, large law firms which are doing well monetarily and have a large staff of lawyers are sometimes available to do what is called "pro bono" (or public interest), free legal work. That can be kind of an iffy thing, and maybe it's more "if" and unavailable than available, but view it as an access, . . . where you want to get to the right people, you want to make your voice heard, and get access to lawyers who often can be made available if they are simply informed that there is a legal need around.

One bonus for the private bar—and this is a new development for private attorneys, and really for all attorneys— To the extent that one is bringing a civil rights lawsuit now, under a civil rights act—and these are mainly the older civil rights acts which cover any suit against a state or local agency, but not yet under 504 unless 504 is against a state or local agency—there is a Civil Rights Attorneys Fee Act of 1976, which is an incentive to private lawyers to get a fee from the opposing party in a case where [the private lawyer] prevails. That's a new development to encourage lawyers to take civil rights lawsuits.

Let me say in conclusion that laws, whether they be in statutes or in court decisions, are only as good or as meaningful as people will make them. And laws need people who are organized to ensure that they will really benefit people. Let me urge you in that regard to stay organized, to stay strong, and to keep your voices clear and loud. □

THE REGULATORY APPROACH TO SOLVING DISCRIMINATION IN INSURANCE

by HERBERT ANDERSON

[Mr. Anderson is Commissioner of Insurance for the State of Iowa. The following address was delivered as part of a panel discussion which took place July 7, 1977, at the NFB Convention in New Orleans.]

It's a real privilege for me to be here this morning, and I feel quite at home in the company of so many of my fellow Iowans.

I'm going to tell you a little bit about the regulatory approach to solving the problem of discrimination, the problem that you're faced with, because I think it's a very practical approach to be considered in every one of the states. The goal, whether the goal is approached through regulation or through the passage of legislation, is the same; and that is, to put an end to and prevent *unfair* discrimination in insurance.

And I'll bear down on the word *unfair*

discrimination from time to time because you must recognize—and I'm sure that you do that the principle of insurance involves the principle of discrimination. And because discrimination is an inherent part of the insurance process, it's very very easy for those involved in the insurance business to slip into unfair discrimination.

Now, a regulation such as the one we have adopted in Iowa is merely a statement—promulgated under an administrative procedures act or other part of the law of each of the states—in which a regulatory agency states to the public its interpretation of the laws of the state. So that a regulation must—as ours does in Iowa—found itself in the law of the state. Iowa, as most of the states, has a version of the National Association of Insurance Commissioners unfair trade practices act. That is an act which, among other things, prohibits *unfair* discrimination between persons of the same class.

Discrimination *is* permitted between persons who are *not* of the same class, and there is the heart of the problem we're talking about; because we found—as we were pushed into this thing; and you must understand that we *were* pushed [laughter]—We found that many insurers, because of the attitudes of the people who operate those insurance companies, really basically, deep down felt that you are a class; and that by treating you as a class of persons, and treating all of you within that class alike, they were not practicing any unfair discrimination. As long as we don't write any blind people, we're not unfairly discriminating against any blind people.

That's where we are. It will be of interest to you, if you're not aware of it, to know how we in Iowa came to the point at which we are today, which is a starting point. Jim Omvig, who I'm sure is known to many many of you, and known to us in Iowa as an Assistant Director of the Iowa Commission and an important person in the National Federation of the Blind of Iowa, came to my office just about a year ago now, with a story that I found somewhat hard to believe except that I knew him to be a person who was used to telling the truth. He told me that he and Mrs. Omvig were at the Des Moines airport shortly before that and stopped by one of the insurance booths to buy some flight insurance. He found that although Mrs. Omvig could buy the amount of flight insurance which was the maximum sold by the company, which I think was $300,000, that Jim could buy little or none, simply because he is not sighted.

Well, as I say, that sounds ridiculous on its face and would be hard to believe except that I was across the table from a fellow Iowan and a fellow employee of the State of Iowa, so I knew that I could believe him. Also, I was across the table from a person who was not satisfied to relate to me this horror story and stop; but who came for the purpose of getting something done about it. Those of you who just heard Dr. Jernigan talking to Mr. Carroll know that in Iowa, when the people from the Commission or the Federation come to you, it's a much easier way of life to try to do what they want than to oppose them. [Laughter and applause] So therefore we decided to devote some of our attention to getting these people out of our hair, and the obvious and simple thing to do, it seemed to us, would be to promulgate a regulation under our Insurance Trade Practices Act which would make it clear that the kind of discrimination being practiced in that case and other cases like it was not lawful in Iowa.

So we put together a very simple regulation. We had a substantial amount of input from Mr. Omvig, and from others at the Iowa Commission, in the process; and we came up with what I believe is a very workable regulation and one that could easily be promulgated in almost every one of the states.

I want to extract just a few sentences from our regulation . . . . We state that: "The purpose of the regulation is to state that individuals who are blind, partially blind, or have a physical disability do not, for that reason, constitute a class. Therefore, individuals who are blind, partially

blind, or have a physical disability will not, solely on that basis, be unfairly discriminated against . . . ."

The prohibition section of the regulation states: "For the purposes of [the law], individuals shall not be considered to be of the same class solely because such individuals are blind, partially blind, or physically disabled."

And then after our public hearings and the tremendous uproar that the industry made, we inserted an additional section stating: "Nothing contained in this regulation shall be construed to prohibit discrimination between individuals of the same class who do not have equal expectation of life or who have an expected risk of loss different from that of other individuals of the same class."

So what the regulation says to insurers is, You must look at this person as a person, not as a blind person; look at the person as a *person*, [applause] and then underwrite that person as you would others. And if there are valid reasons which relate to the hazard that's assumed—the risk that's assumed by the company—then you certainly may underwrite that person by refusing insurance, by charging a different rate, or placing the person in a different classification—but not simply on the ground of blindness, partial blindness, or physical disability. . . .

Now, in the hearing process, which is required under our law in Iowa when we promulgate a regulation—we have to go before a legislative committee as well as have a public hearing—and in the public hearing, I was really hard put to believe some of the things that were said to us and some of the things that were put to us in writing. I'm sure that, for you, it's perfectly understandable that people would say things such as were said to us. But when I started getting written comments such as: "The assertion that people who have physical disabilities are not a class flies in the face of fact. In point of fact they are a class. Persons who are blind do have greater degrees of risk than persons who are not blind. Neither regulatory nor legislative assertions to the contrary can change the facts; they can only change the nature of the ways in which people and institutions deal with the facts."

And another one, which I think really is illustrative of the problem, is from the general counsel of an insurance company, who said: "It would appear to us that individuals who have such disabilities referred to in the proposed regulation would be more prone to both severity and frequency of accidents than individuals without this disability."

And then the classic—and the one that just about bowled me over—came from a person who is educated and has a great deal of experience in the insurance business, and who said to me in writing: "It is my belief that persons who do not have functioning vision represent a different life expectancy than those who do."

In addition to those things which were put in and which I think would have been enough in themselves to convince us of the need for the regulation, we did have a great deal of input and support from your organization in Iowa and from the Iowa Commission, and that was very important. We had one of the largest hearings on a regulation that we have ever had, and one of the most active and the most interesting.

I want to state a couple of more things. One is, as the topic of the panel shows, this is an *approach* to solving the problem of unfair discrimination. We are often inclined to think that once we have achieved legislation, or achieved the enactment of a regulation, the problem is solved. You very well know that's not true. Words on paper don't do anything. It's a step and an important step, but it can only be an effective step if there is follow-up. And we are now in that process in Iowa, and I have no doubt whatsoever that my friends from Iowa here in the audience and on the platform will see to it that we are made aware of the need to continuously implement this regulation until, at some hopeful day in the future, everybody who is involved in the insurance business will see that the attitudes which prevent them from practicing only fair

discrimination disappear.

The other thing that I would like to say to you is, again, that the law in Iowa upon which we based our regulation is very similar to existing law in almost every one of the states. And I believe that the kind of regulation that we have promulgated in Iowa can be put into place in every state. And as you well know, it can only be done through your efforts. It is not a self-starting thing.

It's no coincidence that a regulation of this kind has come into existence first in the State of Iowa. That's not attributable to me or to the Iowa Insurance Department. It's attributable to the same facts that show that a large section of the room here is filled by people from Iowa who are dedicated to achieving rights. □

REPORT FROM THE NFB WASHINGTON OFFICE

by JAMES GASHEL

[The following is the bulk of the report delivered by Mr. Gashel on July 8, 1977, at the NFB Convention in New Orleans. James Gashel is Chief of the Washington Office.]

It's been a very busy year for us in Washington, as you know because you've been participating in the many activities. Everything we do in the Washington Office depends a great deal on what you are able to do at home. It's impossible for one or two or three people, or each one of the state presidents, to do the job. The activity in Washington depends very heavily on what you as individual Federationists do, just as the PAC Plan and every other thing in this movement does.

It has been a busy year. We've been active in a number of areas. Let me talk to you about a few of them. One of the things people ask me about sometimes, and some of the rest of us—they say: We pass resolutions at these Conventions, but what ever comes of them? Well, I'm pleased to be able to report this year that we've made significant progress in some areas during the past year with respect to resolutions passed by this Convention.

First, the Social Security area, and specifically, the Supplemental Security Income program. Since the inception of the SSI program and its actual implementation in 1974, one of our objectives has been to secure the pass-through of cost-of-living increases. Initially, the problem was that there was no assurance of cost-of-living increases in the federal benefits. In 1974 at our Convention we passed a resolution on that issue. We worked in the Congress, and a few months later, the cost-of-living increase provision was put into the federal SSI program. But then we had the problem in the states, where the states that supplement the SSI program were not, in many cases, passing along the federal cost-of-living increases. This was a problem. The state treasuries were eating up the increases, and the recipients were not benefiting through their checks. We passed resolutions on that issue two years running, and I'm pleased to say that in the last Congress we succeeded to a great extent in securing pass-through of the cost-of-living increases. [Applause]

Now the victory was a partial victory; there's some qualification, and it's not a total pass-through. But we succeeded to a large extent; and you should see in many states the full pass-through of the federal cost-of-living increase on the July SSI check.

Another area that we've been concerned about—and something, again, that we succeeded on—was presumptive eligibility on the basis of blindness for SSI benefits. Now in that area, too, there's been a problem. In the disability category under SSI, there was a provision in the law to provide that SSI recipients could be eligible for payments on a presumptively eligible basis; that is, while medical evidence was being processed and worked up and so forth, the recipients

would be able to receive cash SSI benefits, and this would mean an earlier payment than could otherwise happen. The Social Security Administration took the position that the law didn't mention that they could pay benefits on a presumptively eligible basis to the blind. Thus, they were not paying "presumptively eligible" benefits to blind people. In the 94th Congress, the Congress took care of that problem and ordered the Social Security Administration by law to process claims on a presumptively eligible basis, thus allowing blind persons to receive earlier benefits than they would otherwise when applying for SSI—another victory for the organized blind. [Applause]

Again, the victory is only partially complete. This time we need to go back and deal with it administratively, . . . to get the Social Security Administration to recognize that all legally blind persons, not just totally blind persons, should be eligible for the presumptively eligible payments. . . .

Another victory during the past year in SSI dealt with the issue of the value of a home. One of the issues that we've been extremely concerned about since the SSI program came into being was the fact that a person could only own a home of less than $25,000 in value (or $35,000 in Hawaii or Alaska). This year, in the Congress, that restriction was eliminated. There is no more restriction on the value of a home for an SSI recipient. [Applause]

When the SSI program was created and as it came into being, we established our agenda for changes in the SSI program. And we have met many of the commitments on that agenda, either through congressional action or through administrative change.

That covers the 94th Congress. Now in this Congress, with respect to SSI, there is some activity. In late April of this year, the chairman of the Public Assistance Subcommittee in the House, Mr. Corman of California, introduced a bill—H.R. 6124—which would make certain other amendments to the SSI program. We appeared in those hearings. As a matter of fact, the National Federation of the Blind was the only organization of or for the blind to appear in those hearings and to make a pitch for changes in the Social Security Act to improve the SSI program. Some of the things we sought go back to Convention resolutions which we have adopted.

For example, we favored the establishment of a vigorous outreach program by the Social Security Administration, pointing out that with respect to blind persons, many of the Social Security workers, the claims representatives, and other representatives of Social Security very often do not understand the special provisions in the law which apply to the blind. And very often blind people are unaware of these special provisions. Therefore, the full effect of the law is not carried out, and the full impact of the benefits is not provided to blind persons. We said it is time for Social Security and the Congress to mandate a vigorous outreach program to correct these inequities.

We also said, with respect to cost-of-living increases, that this time the Congress should complete what it began in the 94th Congress. There was a limitation placed on the passing-through of cost-of-living increases, and the limitation was this: The state would not have to pay any more for the supplementation of SSI benefits than it was paying during the previous 12-month period. In other words, the states were "held harmless" from rising costs in the SSI program. What we said was: The recipients should be "held harmless" from the rise in the cost of living. [Applause] The states must be mandated to pass through the full cost-of-living increase.

Next we said that the rules for the deeming procedures for ineligible-spouse situations should be further liberalized. One of the items on our SSI agenda has been a liberalization in the deeming rules. During this year we did succeed, as you read in the May *Monitor*, in achieving some liberalization of the deeming policy in the SSI program. But it wasn't enough. What we said to the Congress, in testifying on H.R. 6124, is that we wanted to be sure that the ineligible spouse would be able to retain at least

$400 per month before any of his or her income is deemed to the eligible SSI recipient. That's what we're trying to achieve on deeming in the 95th Congress.

Next, with respect to the "plan for self-support" provision—another item on our SSI agenda: So far, we haven't succeeded in getting this item dealt with. You know that there is currently a limitation on the length of time a person has to carry out a plan for self-support. We're seeking the removal of that time limitation so long as the recipient has a reasonably adequate plan for self-support and is making an effort to fulfill that plan. [Applause]

Again, that's what we testified on with respect to H.R. 6124. Let me tell you where we are with respect to that bill: In early June, a piece of legislation containing some of the provisions of H.R. 6124 was passed by the full Committee on Ways and Means in the House and has now, in fact, been passed by the House of Representatives. The number of that bill, incidentally, is H.R. 7200. It's now over in the Senate. We're going to have to continue waging our campaign for the kinds of provisions I just talked to you about because, in the main, those are not reflected in the bill which came out of the Ways and Means Committee. That bill is now over in the Senate Finance Committee, and later in this session of the Congress, we'll have an opportunity to testify and call upon the Senate for specific amendments to continue to address the problems which we've identified on our SSI agenda for the future.

Let me move next to the area of disability insurance. During the 94th Congress, the activity on disability insurance was restricted primarily to hearings. Again, the National Federation of the Blind appeared at these hearings. And I would say we were the organization mainly responsible for getting hearings on issues specifically related to the disability insurance program. In those hearings we dealt with the three issues in our package of changes for the disability insurance program.

To refresh your memory, those changes are these: (1) to remove the five-month waiting period for disability benefits, because the need for disability benefits begins at the onset of blindness, not five months after it occurs. [Applause] (2) Our objective has been to remove the 24-month waiting period for the Medicare program, and again, because the need for Medicare eligibility begins at the onset of blindness, not two years after it.

The third part of our overall package on disability benefits is to liberalize the eligibility conditions for benefits, to remove the disincentives, to provide cash benefits to persons regardless of their earnings, and to lower the work requirement to a flat six quarters; to standardize it, to make it less discriminatory, and to encourage blind people to go to work. [Applause]

In the 94th Congress—as I say—the activity on this issue in the House and in the Senate was restricted to hearings. The Social Security Subcommittee held hearings; the Federation testified. We were joined by our long-time friend, co-worker in the Congress—who, unfortunately, is not there in the present Congress, but who was certainly there in the 94th Congress and there at our side—Senator Vance Hartke of Indiana—who testified in favor of our disability insurance provisions. We were also joined by the Honorable Phil Burton of California, who, in the 94th Congress, was chairman of the Democratic Caucus and testified in favor of our disability insurance amendments.

That takes us to the present Congress and disability insurance. Each one of the bills involved in our disability insurance package has been introduced in the 95th Congress. First, with respect to eliminating the five-month waiting period for eligibility for disability benefits—that bill has been introduced by a number of persons, but especially Congressman William Lehman of Florida, who has introduced H.R. 6751, which would eliminate, as I said, the five-month waiting period for cash disability benefits.

With respect to the 24-month waiting period for Medicare eligibility, Congressman Bill Chappell of Florida has introduced

H.R. 804, to reduce the 24-month waiting period for Medicare eligibility.

Now with respect to the issue of liberalizing the conditions governing eligibility of blind persons—the removal of the earnings limitation (or the substantial gainful activity test), and the standardizing of the work requirement—a number of Members have introduced bills to accomplish that end. Chief among them is the chairman of the Social Security Subcommittee itself, Congressman James A. Burke of Massachusetts. [Applause] His bill is H.R. 3049.

Over in the Senate, that bill has also been introduced. One of the long-time supporters of our disability insurance bill, and in fact, the Senator who first succeeded in getting it adopted in the United States Senate, is Senator Hubert Humphrey. [Applause] For a time after he got our disability insurance bill passed for the first time in the Senate in 1964, Senator Humphrey left the Senate and became Vice-President and so forth. He's back again. Senator Hartke, of course, is no longer in the Senate; Senator Humphrey is in the Senate, and he has introduced the disability insurance for the blind bill—along with Senator Birch Bayh of Indiana—as S. 753.

For the conservatives in the audience, Senator Carl Curtis of Nebraska—a good friend of the organized blind—has introduced S. 861, an identical bill. And incidentally, Senator Curtis is the ranking Republican on the Senate Finance Committee, the committee which the bill has to go through in the Senate. So with that kind of support, we're in good shape in the Senate in the 95th Congress.

There have been off-again on-again hearings in the House on Social Security issues. We heard from associate commissioner Elmer Smith of the Social Security Administration yesterday, and he talked about the tremendous issues confronting the Congress this time with respect to financing the program. The Social Security Subcommittee is now about to address a whole variety of issues, including financing issues, including removal of disincentives in the disability insurance program. Those hearings will commence on July 18 of this year, and the Federation will be there. We will testify on this legislation. We are also assured that a number of Members who have introduced identical bills on the disability insurance program will be by our side to present supporting testimony in this round of hearings. Some of you have sent telegrams to help bring that about.

I think that summarizes where we are with respect to the Social Security legislation and the disability insurance program in this Congress. We are keeping faith with the movement: The bills are introduced; and now it's up to all of us to act to try to get them passed. [Applause]

With respect to rehabilitation legislation, let me say that in this Congress the emphasis is going to be on extending the Rehabilitation Act and perhaps making some very substantive amendments to that. You can review the *Monitor* for the kinds of things we have proposed with respect to the Rehabilitation Act, including things such as our Comprehensive Services for the Blind bill which has been introduced in the House by Congressman Gene Snyder of Kentucky—it's H.R. 4775 [see the May *Monitor*].

Also we made other suggestions to the Subcommittee on the Handicapped in the Senate with respect to amendments to title V of the Rehabilitation Act—those are sections dealing with employment of handicapped persons in the federal government, affirmative action obligations by private contractors, and also section 504 amendments. In certain cases we'd like to tighten up that legislation and put some more teeth into it. You can refer to the *Monitor* for past testimony on the rehabilitation act; but our effort this time will be to get what we have already recommended in oversight hearings actually adopted as part of the law.

Next, let me move to sheltered workshop legislation. For a long time our effort on sheltered workshops was two-fold: First, we wanted to secure a congressional mandate that shopworkers would have the right to organize and bargain collectively. A year

ago, without congressional action, through administrative action by the National Labor Relations Board, we secured full recognition of that right to organize. [Applause]

But in the other area we have a way to go, because that one deals with a legislative change. And that is, specifically, to guarantee blind workers in sheltered workshops the right to receive—and actually the receipt of—the federal minimum wage. We are back in the 95th Congress with that proposal. For a long time the Congress was saying, Let us study the issue. So they studied the issue, and what did they find? They found that the average wage for workers in sheltered workshops for the blind in 1975 was $2,610 annually—a shocking and deplorable statistic.

In this Congress, Congressman Phil Burton of California, the ranking Democrat on the Labor Standards Subcommittee, the subcommittee that has to deal with this, has introduced a bill to guarantee blind workers the mimimum wage. [Applause] That bill is H.R. 8104. We have been assured by the chairman and the staff of the Subcommittee on Labor Standards of the Committee on Education and Labor in the House that hearings will be held on H.R. 8104. We will have our chance to state our case before the appropriate committee of the Congress.

We have also been assured by the chairman of the full Committee on Education and Labor—Carl Perkins—that if we can get this bill acted upon by the Labor Standards Subcommittee, he would bring it up in the full committee expeditiously and then have it brought up on the floor of the House under suspension of the rules.

Now, we're going to have to press for all of that; we're going to have to work to get H.R. 8104 adopted. But we're on our way to securing the minimum wage for blind workers in sheltered workshops.

I would point this out to anyone who asks you, Why the National Federation of the Blind.

Let me move to an area out of the legislative arena for a moment: In his report on Tuesday, Dr. Jernigan mentioned some of our activity with respect to the Randolph-Sheppard program. Of course, we have the 1974 amendments to the Randolph-Sheppard Act. We were largely responsible for bringing those about. This year we finally succeeded in getting some regulations on the Randolph-Sheppard program. On March 23, the Rehabilitation Services Administration did issue the regulations implementing fully the 1974 amendments to the Randolph-Sheppard Act.

There are problems with those regulations. They're not everything we wanted, and there are problems. One of the areas we have been particularly concerned about has been the assignment of cafeterias. The federal facilities have been glad to give us lobby stands, or glad to give us snack bars in the basement near the furnace where the candy bars melt, but if you try to get the full-line cafeteria—the regular food service in the building—they try to find some way out, and usually that is done with the support of the Office for the Blind, or it has been in the past. It will not be in the future if we do what we can do to change that situation.

Last year at the Convention we talked about the problems with the Office for the Blind, and we mentioned specifically a situation in West Virginia. I'd like to report to you on that case. You recall that the situation was this, and it's a precedent-setter, it's one for the whole nation to be concerned about: Under the Randolph-Sheppard Act there is a priority to be given to the assignment of cafeteria space to blind persons on federal property. The Mine Safety Academy at Beckley, West Virginia, was attempting, at the time of our Convention last year, to establish a cafeteria and to do it outside of the priority under the Randolph-Sheppard Act—and to do it with the blessing of HEW and its General Counsel, and of the Office for the Blind. We said we wouldn't tolerate that. In July of last year, following our Convention, we filed a lawsuit to prohibit that action from going forward. A year has gone by on that lawsuit; consent agreements have been entered into, negotiations have been entered into; everything

isn't final yet. We had to beat the state agency in West Virginia up to the line on this, because they had to get involved too. Ultimately they joined us in the lawsuit, and as I say, we're not quite there yet, but it would appear that within a couple of months, we will be able to report to you that blind people in West Virginia are running that cafeteria at the Mine Safety Academy. [Applause]

The one thing I can tell you—which is the important thing for the nation—is this: The Mine Safety Academy and HEW had to cave in and admit that this is a cafeteria under the priority assignment in the Randolph-Sheppard Act. But we had to file a lawsuit to get that admission, and to file that lawsuit it took enough people on the PAC Plan and contributing other ways so that we could get that done.

Now let me talk to you about the Nash case. It's another Randolph-Sheppard situation. What we find, when we get these laws passed, when we get the regulations enacted, very often the administrators can find ways which they think are creative, to try to get out of them. And very often we have to resort to the courts.

That was the situation in the Nash case. Very briefly, it goes like this: Early in this year, Jessie Nash, who is a blind vendor and at this Convention from the State of Georgia, began to hear that the snack bar that she was operating at the Marine Supply Center in Albany, Georgia, was going to be converted to a full-line cafeteria, and that the contract for that full-line cafeteria was going to be awarded to a private food-service provider. She contacted all kinds of people. She started contacting the state agency. She started contacting the governor. She wrote to Senator Randolph. He referred her letter to the Office for the Blind. (After all, you can understand that; they are *supposed* to run the program.)

On February 14, she contacted me, and I said, Let's file a complaint. On that date, we did, we filed a complaint, or a request for a full evidentiary hearing, as it's called under the Randolph-Sheppard Act. On February 24, she got an answer back, saying they had received her complaint. On February 29, she got another answer back, from the director of rehabilitation, saying they were trying desperately to resolve her situation. And on March 17, the federal agency involved—that is, the Marine Corps—issued notice to the state agency—the Georgia Cooperative for the Blind—that it was terminating the location in Building 2200, which was the one Jessie Nash had.

On April 15, at 3:30 p.m., Jessie Nash was out, with no full evidentiary hearing despite what the law said. On April 18, rather than going to work in her vending facility, Jessie Nash, with the help of the National Federation of the Blind, went to court. [Applause] As a result, she got her full evidentiary hearing.

The state agency said: It's not our problem; it is the federal agency which just doesn't want to give us this cafeteria.

We got the White House involved all along the way because it would be an embarassment to the Carter Administration to have a blind person kicked out of a vending stand in Georgia. There was a lot of handwringing and a lot of moaning and a lot of saying, Yes, it *is* a desperate situation; but there was not too much action. And when it came right down to it, we had to go to the courts.

Where we are now is that we have filed for arbitration, with the Secretary of Health, Education, and Welfare, to have this case arbitrated under the provisions in the Randolph-Sheppard Act. The state agency has tried to get out of it, and we've said that that is an "adverse finding," and therefore, we're going to take this to arbitration.

We're going to get Jessie Nash her vending facility or we're going to find out why. [Applause] This is a clear case where both the federal agency and the state agency involved have simply failed to perform their duties under the Randolph-Sheppard Act, have violated the law. A responsible organization of blind persons has to contest that. This is a precedent-setting case, as is the West Virginia case. I would ask you: Where

is that organization which calls itself the Randolph-Sheppard Vendors of America? Somewhere down in the backwater living with the agencies, holding their hand. But we know where we are: We're in the courts, and we're in arbitration at HEW, and we'll never go back. [Applause]

Next, let me take you to section 504. Section 504 is the non-discrimination part of the Rehabilitation Act and provides a kind of limited civil rights provision. There was a lot of ruckusing and roistering about to try to get the regulations out. People usually think that we would be in the front of such activity. We confuse folks sometimes. On section 504 we actually felt that the regulations as they had been presented to us would not result in civil rights. What they'd really do is result in the concept of doing something "for the handicapped," rather than just opening the door and letting us in to do it for ourselves. [Applause]

The overwhelming presumption in those 504 regulations, as they were presented to us last year, was that the handicapped are somehow different, and that you've got to provide, therefore, a whole series of special and separate treatment. Therefore, in the negotiations at the end of the 504 regulation-making, we felt it was appropriate for the Administration to review those regulations. What we called for was a specific provision mandating that there would have to be the opportunity to take full advantage of the *regular* opportunities—not separate ones, but the regular ones. This was essential.

In the section 504 regulations, therefore, we called for a provision to require that recipients of federal financial assistance not lock us into special programs and different services. I am pleased to tell you the organized blind were heard again; we were successful. The provision in the regulation reads like this:

> **Section 84.4(b)(3)** Despite the existence of separate or different programs or activities provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such programs or activities that are not separate or different.

That amendment in the regulations is a crucial one; and it's what they call the NFB Amendment. [Applause]

In commenting on this statement, the Department of HEW said this: "It must be emphasized that the provision of unnecessary separate or different services is, in fact, discriminatory. The addition of the phrase 'in the most integrated setting appropriate to the person's needs' is intended to reinforce this general concern. A new paragraph has been added to section 84.4 requiring recipients to give qualified handicapped persons the option of participating in the regular programs despite the existence of permissively different or separate programs." A very essential concept and a very important contribution by the organized blind.

Now, where we are with respect to section 504: The regulations are in place. We have already participated in the filing of two complaints under section 504. We will participate in the filing of additional complaints. It's doubtful right now whether the Office for Civil Rights, which has the responsibility for administering this, is going to be able to enforce section 504 adequately during the rest of 1977 and 1978—probably almost until October 1979. At least, that is what the Office for Civil Rights tells us. They say there are not enough staff resources; there are court orders requiring prior enforcement of other civil rights legislation. You handicapped people, you have to wait until we get done with these other things.

This organization is not tolerating that. Again we have gone to the courts. So often we have to; it's our only recourse. In this situation, there are court orders mandating certain enforcement priorities for the Office for Civil Rights. Right now those court orders do not cover the blind or the handicapped even though we have filed complaints with the Office for Civil Rights.

We have now filed papers with the court to intervene in one case. If we are not

successful in that intervention, we will file additional lawsuits. We have working with us one of the most prestigious law firms in this country—Covington and Burling. We will sue HEW and we will get enforcement of section 504. Whereas we thought it was not appropriate to lead on the picket line, because that action was not in our best interests since we had to get some changes in the regulations; we do think it is appropriate to lead in the courtroom to mandate enforcement of section 504. □

THE WHITE HOUSE CONFERENCE ON HANDICAPPED INDIVIDUALS: CONVENTION DISCUSSIONS AND LATER DEVELOPMENTS

A major portion of the Wednesday session at July's National Convention was devoted to the White House Conference on Handicapped Individuals. As guest speakers we had Jack Smith, executive director of the White House Conference, and Lisa Walker, professional staff member for the Committee on Human Resources in the U.S. Senate. Ms. Walker is also on the staff of Senator Harrison Williams of New Jersey. Senator Williams is the chairman of the committee and the main sponsor of the legislation which created the White House Conference.

Mr. Smith spoke first. He talked some about the results of the delegate voting, but he also discussed the structure of the Conference, as well as the reaction of the delegates to it. Following are excerpts from his remarks:

Jack Smith: I want to discuss some of the substantive issues and matters that I think clearly indicate that NFB—and I don't mean this as a criticism—must provide a stronger focus in the future in its missionary thrust in the understanding of the word independence. The NFB's reactions at the Conference—and others'—in my own personal analysis, indicates otherwise. I think that really saddens me personally.

Although many individuals were involved with the Conference, in the development of the Conference and organizing it, as executive director, I do bear the heavy responsibility of answering to the constituents for whom the Conference was intended. And it seems, for example, inconceivable to me that a forum that I had personally corrected could have been changed back to the original and that delegates to the Conference would have been asked questions that clearly smack of a lack of understanding of the word independence. And in spite of the strong call for the election of delegates to the Conference, some states selected delegates through what was not an optimum democratic process. And I should mention, by the way, that our initial survey of this indicates that 36 states elected delegates, 14 named the delegates, and 6 others used a combination process. . . .

Now, the White House Conference facilitated many meetings outside of the scheduled format. There were a group of women who met, there were parents, there were a group of hidden handicaps that developed resolutions, there was one on religion, a group on the non-white, and there was a group called the Alternative Conference. [Cheers and applause] It seems that that's a very popular conference. Well, I can say this concerning that particular conference. I do have a report and I pledge to you that I will make every effort possible to ensure that— We are encouraging our National Planning and Advisory Council for full inclusion of the Alternative Conference Report in the official proceedings that go the Congress and President. . . .

Lisa Walker had no direct role in the running of the Conference. She discussed briefly the likely results of the Conference in terms of the Congress:

Lisa Walker: As far as implementation plans, I'd be misleading you if I said that the Congress had any. At this point, what the legislation lays out is that a report has to be

available to the Congress and to the President within 120 days after closure. That would, I hope, lay out very clearly the recommendations of the Conference and, I would hope, the recommendations of whatever minority reports there may be. . . . I have done some brief review of the Alternative Conference Report and it seems to me that many of the recommendations—particularly in the accessibility and civil rights areas—are recommendations which the Congress has been considering over the last couple of years and [the report] will lay some very useful specifics before the Congress in terms of moving. . . .

Before the session was thrown open to questions from the audience, President Jernigan responded to the speakers, as follows:

President Jernigan: I wish to begin by addressing some comments to Mr. Smith and, Miss Walker, to you. I'll make them as brief as I can. I must tell you as an overall observation that I find the White House Conference on the handicapped, as it has so far developed, not a potential stepping-stone, but a stumbling block. That's what I believe. That is a carefully considered judgment, not something said for rhetoric or in haste. I wish to tell you quickly why I think that is so.

In the first place, the delegate system: It is said that in 36 states the delegates were elected. That may be. I don't know whether Iowa was regarded as one of those that elected delegates or not. I don't know whether Mr. Smith knows. But I do know this: Even if Iowa had elected delegates by the method that it was proposed that it elect delegates, it would not have been a very democratic way to proceed. And if you begin, as we learned a number of years ago, with—let us say—a legislative body that from its very base is selected in such a way as to stack it, no matter how many delegates you get together, if they don't represent anybody except certain special interest groups or themselves, then consensus doesn't mean consensus; it simply means part of the same old power game.

In our state as an example—and I'm sure all of you could give examples in your own state—there were regional forums held. Those forums discussed, talked—oh they talked and talked and talked. I don't know who appointed the people who chaired the sessions—probably the state director did. There were no disabled people who did the sort of keynoting and making the announcements—the laying down of policy.

We got lots of books which structured very highly what the state leaders were to do and how they were to handle dissent and all kinds of things. This whole Conference was characterized by paperwork, so very much paperwork, so very very much paperwork, that ultimately one threw up his hands and said, O Lord, no more! And it was all done in the name of democracy.

However, after all that fol-de-rol, the state director of our conference, appointed by the governor, got together a nominating committee which he appointed. I happened to be one of that nominating committee. That doesn't make it a bit more democratic—it wasn't democratic at all.

There were about six or seven of us who met there, and we were going to pick people to go. And we swapped and horsetraded as people do in nominating committees—that's what nominating committees do; I understand that process; I've engaged in it for years. We swapped and horsetraded, decided the slate we'd like to see elected. What do you suppose happened?

Three weeks later nothing had happened. We were going to send out ballots to all the people who had attended the regional forums. But the state director called and said that Mr. Smith had told him he had to have the names in on Monday and this was Friday. And he said: I don't think I have time to send them out, so if you don't mind, I think I'll just pick people and send them in. And I said: Would you mind telling me who you're going to pick? Why no, he said; he thought he would know. And I said: Fine; because if you pick people that I think

are bad enough, I suppose I'd make some row if I had a way to make one. But anyway, he picked a list and sent them in. I think they were about as unrepresentative as most states. I was one of them, by the way; but I was only one. The method was a wrong method.

Once we got to that Conference—and by the way, Mr. Smith says he didn't work out the forum, that he revised the forum. He told me the name of the person who did work it out—and certainly I'm not here to question his truthfulness—but I went to that person, and she alleged, with horror almost, that she had nothing to do with working it out. I don't know whether she did or she didn't. All I know is that the forum was the most custodial forum I've ever seen.

They decided what airplanes you were going to fly on, and what day you were going to come in—yes they did. And in the beginning, until we raised such a row that we drove them off of it, they were going to have you stay in one hotel; and spouses couldn't stay in that hotel; and they had to modify that hotel; and you had to have roommates; and you had to eat precisely what they prescribed. They were paying the hotel $29+ a day for food, because the hotel had to remodel itself in order to handle the handicapped. And finally, when we made them—and I think the word is an honest word—we *made* them ultimately, by rowing and pressure, come to at least saying that they would give us an allowance if we chose to buy our meals elsewhere, we got less as an allowance for buying meals than they paid the hotel for meals—which is some questionable.

They sent us out a form to show us what an airplane ticket looked like, which had: "Doe, John D.," and so forth—a miserable, wretched way— The airlines, you know, said, when I called them to make my reservation, to tell them I wasn't going in when the Conference said: Oh yes, we know all about you; we've been sent a dossier by the White House Conference; so we know what your needs are. And I said: That's just fine; you keep your dossier. I don't care what you think. [Loud cheers and applause]

I felt outraged and insulted as a human being by that Conference which, in the name of independence, did that. And we must either assume—and I'm saying it to his face and not angry with him personally—but we must either assume that Mr. Smith approved of that or did not have the capacity to do it otherwise. It has to be one or the other. That's a terrible thing to say, but it's not meant to be personally attacking him. He either couldn't or wouldn't do it otherwise. That's all I know how to say.

Now when we got to the Conference, I found a system which by its very cumbersomeness and weight made it impossible for the delegates—undemocratic though their selection might have been, and therefore, unrepresentative though they were—it was impossible, as far as I'm concerned, for them to do anything, really. Let me show you why. We had eight workshops. I got—about a week and a half before we went there—I think it was seven or eight big, thick Braille volumes that I was supposed to read. Now, I'm not going to sit down and read eight volumes in Braille in a week to go there, especially when they are items that we were supposed to vote on in three or four days. That's a thousand a day. If you took one a minute, that's better than sixteen hours with no time out for bathroom or eating. It's just madness.

They had eight workshops with very definite rules about how those workshops could operate. Ah, but the delegates, as we've been told, could change that and did. They decided they'd operate the workshops differently. To which one says, So what? The workshops met all day long and voted anything they wanted to vote, but that vote didn't get translated into a Conference recommendation at all. The workshops were discussion groups. Somebody said "tutorial" and quoted Mr. Smith as saying "tutorial in nature"; and I said I really needed to learn a lot of things maybe, but I didn't come there to learn them. Anyway, we went to the workshops, or I went to one and decided

it was a waste of time, and I didn't go back. [Applause]

So at night then, the state delegations caucused. Now, presumably, workshop recommendations were transmitted to the state caucuses. But the state caucus really didn't have to abide by what the workshop said; it could do as it pleased. So what was all that discussion about and what difference did it make what we did during the day?

And then when we got through with that at night, the state directors took themselves off, and they had a caucus—presumably taking our state caucus recommendations. I don't know what they did in their caucus, I wasn't there; and I don't know what they did in passing it on to the staff.

After all of that, a number of us got together with an alternative conference and conducted one the way we thought a conference ought to be conducted—democratically, that is. We let anyone come who wanted to, speak who wanted to, bring up any motions, resolutions. We appointed a committee that sat up all night long and wrote the Alternative Conference Report. We took it back to the group the next day, read it, and voted on it.

But now let's see what happened to the dissent that occurred in the Conference. In the Conference, a lot of people decided they were going to write resolutions. So they proposed resolutions, and it became clear to anybody who had chaired anything that really, a promise that you were going to have a meeting of all the delegates—a "plenary session"—doesn't that sound nice?—we're going to have a plenary session. So on Thursday night we had our plenary session, and what do you suppose happened at it? Well, this is what happened at it: They had—I've forgotten how many—ninety-odd resolutions, but it was clear they couldn't vote on that many. . . . So what did they do? Start discussing the resolutions? It was clear they'd have been there a week.

You know, by that time they were in a hold; there was no way out. So somebody got up and said they didn't see how we could do all that, I'm told; and the chair said: Well, in other words, you're moving that we adjourn.

So he hadn't really moved, as I heard it, that we adjourn at all; but of course a chair has some suggestive powers, as you know, and the chair said: Well, do you move we adjourn?

The guy said: Well, yeah, he guessed that's what he had in mind. So then what did they do? They spent the next two hours debating and fighting over whether to adjourn. And they adjourned, so help me, and didn't vote on a single resolution, not a one.

And then what did they do? The Conference staff got together—I presume somebody did—and they sent me out a sheaf of print paper—hundreds of pages, it looked like—resolution after resolution, and said (I think I got it on a Monday or a Tuesday) that I was to have it in by Friday, July 1st, having voted on each resolution. Do you really suppose I sat down and got me a reader? I got *four* telegrams—I hate to see government money spent in that manner—four separate telegrams telling me I could hire a reader. I *had* a reader.

But anyway, they sent all these hundreds of pages out there and asked me to vote on it. So I called Jim Gashel, and I said: Are you going to vote on all this stuff? And he said: Well, we really ought to. And I said: Well fine. Will you send me the numbers—this is a numbering system—and I'll try to vote the same way you do. Vote me, will you? He never did, so I guess I'm not counted.

Now I'm told that just before I left, I got another big slug of stuff that was as thick as a telephone directory, telling me it had to be in. This is the most red-tape, mickey mouse, nothing conference I have ever seen. [Cheers and applause]

What really bothers me is this: We have been told that our Alternative Report will will not receive—I don't know whether this is accurate—that our Alternative Conference Report—although we began by having some 400 people there the first afternoon we met as an alternative conference—would not receive equal distribution with the White

House Conference Report, but only if it were requested.

The second day we had fewer people there. Now, why did we have fewer? I don't know. But I'll tell you this: One member of the drafting committee came to Jim Gashel, and we can prove it, and said—this was a person with a handicap, to be perfectly frank, a wheelchair person—and said: I would like to come back to the Conference tomorrow, but I've been told that if I do, it's as much as my job's worth. I can't. So therefore, I'm with you in spirit, but I dasn't.

And I said, well, we dasn't, you know; we'll be there. Don't you worry about that. I'm not suggesting, by the way, that the White House Conference staff participated in that kind of thing: they did not, I'm sure. I'm not suggesting in any sense that they did. I think that some things happened down in the states, though, that speak to the nature of some of the state delegations.

Now, I would say to you that what bothers me most is that this will be represented as a conference of consumers, or with large consumer input. I think it wasn't. It will be represented to the Congress as what the handicapped want. I think it isn't. It will be, therefore, something we may have as a millstone around our neck to fight. If we must, we will go to the Congressmen, office by office, and Senate office by Senate office; and we'll go to the White House, or wherever we must, and fight to see that this Conference—which was set up in the name of the handicapped—is not used really to impede our progress, and all with a lot of fine rhetoric. [Cheers and applause]

I do not know who speaks for other consumers, but I do know that when you have this kind of group of blind people from every state and every locality in this nation meeting in open convention—whatever may happen to others, I believe that *we* have the right speak for ourselves, and *we* have the right to be heard by Congress. [Cheers and applause]

So I, for one, hope that something *can* come out of this Conference. But so far, I think that the thing that came out of it was that a number of us did the things that I have indicated. I, for one, felt an increasing frustration, indignation, almost an affront to my dignity as a human being by some of the methods that were used in the Conference. And not because anybody was trying to be mean at the White House Conference staff level, not because the Congress did not intend the very best in the world, but simply because I think a misconception was had as to what we are as handicapped people; and also I think it was ineptly done. That's what I think really happened.

President Jernigan offered Mr. Smith and Ms. Walker an opportunity to reply to his comments. He then returned to the question of whether the Alternative Report would be distributed as part of the official Conference report, or only when it was requested. Mr. Smith replied that he had recommended to the National Planning and Advisory Council of the Conference that the report be reprinted as it was presented to them, and be included in the final Conference report.

This answer raised some questions, and President Jernigan tried to clarify the matter:

President Jernigan: Right. And any time that those materials are sent, it will be sent as part of them?

Mr. Smith: It would be printed in what is called the Conference Report. That is my understanding.

President Jernigan: Well, you say it's your understanding. I guess I'm lost there. You direct [the Conference], do you not?

Mr. Smith: I think that what you're asking is, Do I have the final authority to say it will be included?

President Jernigan: Yes.

Mr. Smith: No, I do not.

President Jernigan: Who does?

Mr. Smith: Our National Planning and Advisory Council. [Groans from the audience]

But I'm saying, I do not see any reason why the Council would not accept the recommendation that I've already given them, that that should be part of the Final Report, or the Conference Report—whichever way you choose to call it.

President Jernigan: You have asked already that they do that?

Mr. Smith: Yes. In fact, I've already sent the material to them.

President Jernigan: And asked——

Mr. Smith: That they duplicate it exactly.

President Jernigan: Well, I think that all of us appreciate that. [Cheers and applause]

There is still some question—despite this discussion at the Convention—whether the Alternative Report will be distributed intact as part of the Final Report of the White House Conference. Mr. Smith implied that there was some chance the National Planning and Advisory Council—which, in name at least, is decision-making body for the Conference—might not accept his recommendation that the Alternative Report be included. The final decision is out of his hands. This is the same reluctance to admit any authority or responsibility for actions of the Conference which has shown up all along. We begin to wonder who is responsible for it all. Is it the National Planning and Advisory Council?

They don't seem to think so. Here is part of a mailgram sent by Burt L. Risley, a member of the Planning and Advisory Council, to the other members of the Council in late July. It seems to throw the responsibility back into the lap of the staff:

"I am greatly concerned that the Council and the Secretary are charged by Public Law 93-516 with the responsibility of the Final Report and the Implementation Plan when in essence both documents have been prepared solely by the White House Conference staff with little opportunity for meaningful input or carefully considered review by Council members prior to proposed publication dates. The agenda for this week's meeting of the Council, in this regard, is totally unacceptable. I cannot personally make an intelligent and knowledgeable response to information presented on the Final Report in such a short timeframe and at the same time begin consideration of appropriate methods to implement the Final Report during the subsequent two days. How can we, as Council members, possibly be expected to reponsibly formulate an 'Implementation Plan' until after the concerns, issues, and recommendations of the Conference's handicapped delegates have been made available to us in an understandable form and until after the completion of a comprehensive Final Report?

"I am greatly concerned that state directors were allegedly promised the opportunity to have input into the writing of the final reports when a review of all correspondence reaching my office indicates no such opportunity was indeed actually ever afforded these state directors."

This letter, you will notice, contains the same criticisms of the Conference staff that arose in the Alternative Conference, and indeed, at all levels of the White House Conference. The Council was submitted too much meaningless material and given too little time to study it. They were asked to lend their names and authority to a final document which will actually be produced by the Conference staff. Note also that the state directors fared no better than the Council or the delegates.

In an effort to fix the responsibility for the actions of the Conference, Congressman Bill Chappell of Florida has called for an investigation by the U.S. General Accounting Office. In the course of a speech, printed in the *Congressional Record* on June 29, 1977, Mr. Chappell made the following remarks:

"[A] number of the arrangements undertaken by the Conference staff are so far from normal federal conference procedures and so favorable to a few private firms, that I am asking the General Accounting Office to investigate the Conference. An example

is the meal plan . . . . I am also asking the General Accounting Office to investigate the justification for the Conference's use of a private firm to handle logistics and travel arrangements when a large staff of federal employees had already been assigned. I find it disconcerting that rather than being allowed to make their arrangements independently, all travel arrangements were made by the Conference logistics contractor."

Whether or not the GAO finds that the hiring of Moshman Associates was improper, the performance of this private firm, as much as anything else that occurred at the Conference, recalls President Jernigan's words, "It was ineptly done." Here, for instance, is one of the mailgrams sent to President Jernigan after the Conference. After this one arrived, he received three more mailgrams with the same message. Following the mailgram is Dr. Jernigan's reply:

Dear Delegates to the White House Conference on Handicapped Individuals:

In order to facilitate your reading of the recommendations, resolutions, and word changes and due to inadequate time for recording these materials, we are authorizing payment for the services of a reader if you are unable to secure such a service at no charge.

If you have this need and must pay for the service, you are authorized to be reimbursed for up to, but not to exceed, fifty dollars ($50) by the White House Conference. Moshman Associates, Inc., will reimburse you upon their receipt of an invoice no later than July 15, 1977.

Best regards,

ELAINE M. KOKIKO,
Vice-President.

Des Moines, Iowa, July 14, 1977.

DEAR MISS KOKIKO: From the enclosed copies with differing numbers you will observe that you have now sent me four identical mailgrams—an act symbolic of the degree to which the White House Conference on the Handicapped has made meaningful and efficient use of the taxpayers' money from the very beginning of the whole operation. If I did not receive (or, having received, could not comprehend) the first three mailgrams, it is somewhat unlikely that a fourth would remedy the matter. I am now moved to wonder whether the fees of Moshman Associates are tied to the number of acts performed, regardless of the purpose of those acts. I am also moved to wonder whether I shall, as the days go by, receive yet a fifth and a sixth and a seventh identical mailgram. Mr. Jack Smith as an individual and your company as an organization have brought to this task truly unique administrative and organizational talents and capacities.

Very truly yours,

KENNETH JERNIGAN.

Perhaps the best summation of this Conference is the one made by Congressman Chappell at the conclusion of his remarks, part of which were quoted earlier. As he said:

"However, Mr. Speaker, not all of the results of this Conference have been negative. In fact, one result has been very positive, and it is an indication that there is real movement in this sector of the population which has too often been willing to accept custodial treatment. I refer to the fact that a large number of the handicapped delegates resisted the arrangements set up for them, and declared their right to speak for themselves." □

THE NEW BRAILLE FORUM

> . . . and they knew they were naked;
> and they sewed fig leaves together, and made themselves aprons. – *Genesis 3:7*

Some of us have been reading the *Braille Forum* lately. We read in its January issue that the American Foundation for the Blind had made a grant to "expand" the *Forum,* and we wondered what the effect would be on this lively and vituperative little periodical. We didn't have to wait long. By the March issue, the *Forum* was providing space to Fred McDonald and the Chicago Lighthouse for the Blind. The Lighthouse wrote under its pseudonym, "the Blind Employees and Blind Friends of the Lighthouse." (People familiar with the Lighthouse will remember that use of the word "employees" excludes all the blind workers called "clients.") The Lighthouse staff was writing an "Open Letter to the National Federation of the Blind"; and it had familiar things to say:

"There were 350 (by your count) of your members in New York City recently picketing the American Foundation for the Blind and the National Accreditation Council. Your pickets carried placards stating, 'NAC operates behind closed doors.' Yet, upstairs this very organization was conducting its meetings (all of them) with an open, public-invited philosophy. In fact, two of your key national officers sat in the front row of the observers section with tape recorders."

Monitor readers will remember the incident to which this refers. At NAC Board meetings, the minutes of the secret executive committee meetings are not read aloud because there are NFB observers present. These minutes are mailed to the board members some weeks before the board meeting. Then at the meeting itself, the board members vote on the minutes "as mailed." But at last November's board meeting, the minutes had *not* been mailed beforehand, and some of the board members insisted that they be read aloud at the meeting. The minutes were read, the NFB observers taped them, and they later appeared in the *Monitor.* This business of taping the secret minutes has galled NAC officials ever since. Their letters to us have been filled with bitter references to it.

But notice that this incident is high on the list of things bothering the so-called "Blind Employees and Blind Friends of the Chicago Lighthouse." And notice also that the *Forum* has become the unfiltered voice of NAC and the AFB.

The same open letter in the *Forum* contains the charge: "You sponsor no service programs other than lobbying against all nationally accredited services for the blind, staging strikes, protests, and demonstrations."

This statement accuses us of having no service programs. We are not a service agency, so it is true that we have no orientation center, no vending stands, and no workshops. Still, no one faults the United Auto Workers for not owning companies to produce Chevys and Fords.

Beyond that, however, is the charge that we have no constructive program. We do. Indeed, we feel secure in saying that the major improvements in the status of the blind in the last 40 years have resulted directly or indirectly from initiatives of the NFB. Further, we feel it is no libel to say that the efforts of the American Foundation for the Blind and its satellite organizations have been directed not to improving the lot of the blind, but to achieving eternal tenure for professional workers with the blind.

Representing the blind and only the blind, the Federation has naturally developed a program which grows out of the everyday experience of the broadest section of the blind population. We have fought for and won such goals as the right to use public accommodations, the right to be employed in government service, the right to civil rights, even while receiving welfare, and the right to teach sighted children in the public schools.

This last instance is a fairly clear-cut case. The NFB has undertaken a whole series of lawsuits concerned with affirming the rights of blind teachers, and these suits have stretched out over many states and many years. [These lawsuits, two of which are still in litigation, were discussed in the July *Monitor.*] The culmination of the years of litigation was the Gurmankin case.

The case, which involved a rule of the Philadelphia school system that no blind person could be hired to teach, grew out of the Federation's cooperation with a community legal services lawyer, Jonathan Stein. Mr. Stein contacted Judy Gurmankin and the suit was instituted. The NFB was the only organization to provide witnesses at the trial, and we paid the expenses of bringing in witnesses to testify. We provided background material and other assistance to Mr. Stein at every stage of the case. The American Council of the Blind, the American Foundation for the Blind, the Affiliated Leadership League, and NAC, on the other hand, were nowhere to be seen during this time.

After years of contention, the district court ruled in Ms. Gurmankin's favor. The school board appealed the decision, and the NFB assisted with the appeal. We were in this case from the beginning, and we stayed with it through to the affirming appeal. The Gurmankin case was one more step in a long and carefully planned project; and that project represents the very center of our purpose as an organization. If we often to seem to be the only group in the field of blindness with this purpose, that is what we have come to expect.

But perusing the May issue of the *Forum,* the uninformed reader would get the impression that we were not alone. That issue contains an article titled "Blind Teacher Wins Major Judicial Victory." It is written by Otis Stephens, president of the self-styled National Association of Blind Teachers, a division of the ACB. Mr. Stephens writes:

"On April 25, 1977, a United States Court of Appeals recognized a blind person's constitutional right of access to a public school teaching position. This decision represents a major victory not only for blind teachers, but for large numbers of handicapped Americans who have been subjected to discrimination in public employment.

"The lawsuit that led to this momentous ruling was filed by Judy Gurmankin, who, although fully certified as a teacher, was prevented from taking the competitive examination required to teach sighted children in the Philadelphia public schools. A year ago, Ms. Gurmankin won her case at the district court level, but the school board appealed. Last fall, the American Council of the Blind and the National Association of Blind Teachers joined an amicus brief filed in support of Ms. Gurmankin's cause at the Court of Appeals level."

"According to Attorney Robert L. Burgdorf, who filed the amicus brief and took part in the argument of the case before the Court of Appeals, 'The Gurmankin case is the first employment discrimination suit by a handicapped person to be decided on the merits at the Court of Appeals level. As such, it will likely be a guiding star for anti-discrimination litigation by handicapped people in the future.'

"ACB and NABT are proud to have had a part in this judicial victory."

Unwary readers might get the impression that the ACB had won a real victory for the blind. In fact, though, their involvement was this: After the victory at the district court level—after the four or five years of the actual trial had come to successful conclusion—and when the case had been appealed—at *this* point, a written "friend of the court" brief, an amicus curiae, was filed by a lawyer working for the Developmental Disabilities Law Project. The brief was submitted on behalf of three organizations, one of them the American Council of the Blind. This is involvement in a lawsuit, but it is the kind of involvement you could squeeze in between a coffee break and lunch.

The Gurmankin article is only the most blatant example of a practice that is becoming common in the *Forum.* The magazine reports on successful projects likely to benefit

the blind population. And although the Federation has been the prime, and often the sole, mover in these projects, the NFB is never mentioned. For instance, here is a description of the Kurzweil Reading Machine written by Reese Robrahn in the March *Forum:*

"The drama was renewed on the second day by a demonstration of the Kurzweil reading machine, presented by officials of the Massachusetts-based company which has been developing the machine. The project has been underway for several years and has been financed by the Rehabilitation Services Administration, the Bureau for the Education of the Handicapped, the Veterans Administration, and private foundations. Field testing of the machine is already underway, and there will be soon ten to fifteen machines in place for field testing purposes. The testimony revealed that the present cost of the device is now $50,000, but that this cost will gradually decline to about $5,000 in perhaps five years."

That is a well-laundered account. Even if the Council is unwilling to give the NFB any credit for the project, it's still hard to describe the funding and field-testing of the Kurzweil machine without mentioning the Federation at least in passing. In contrast, the inventor of the machine, Ray Kurzweil, is happy to claim the connection. After all, the more than $300,000 which has come to the project from "private foundations" has been painstakingly gathered for it by the Federation. We have a full-time staff member to provide liaison to the testing project, and dozens of Federationists engaged in the field-testing.

That the *Braille Forum* has become the voice of the American Foundation for the Blind is no more than we expected when we heard that AFB was funding the magazine. The sorry practice of arrogating to itself the accomplishments of others, as well as the real nakedness this betrays, grow just as directly from the ACB's dependence on the Foundation. These are the results of violating a rule so basic that it hardly needs stating: An organization of consumers should not become dependent on another group if their progress as consumers depends on reforming that group.

Basic as this rule is, the ACB has violated it to the point of no return. For 15 years, the Council has depended on the support of the AFB for its survival. The price for this support has been its soul. The ACB now may only speak out on issues which do not threaten the stability of work with the blind as a professional field—the stability of the field as perceived by the AFB. The ACB will always speak out in support of agencies accredited by NAC. Indeed, it will speak in favor of any agency whose clients are seeking to reform it, and whose directors maintain close ties to the AFB.

This was a bargain of the conscience, and although there is no contract available for our inspection, the terms of the contract have become obvious as they have been played out again and again, at the Chicago Lighthouse, at NAC meetings, at repressive agencies across the land.

The ACB side of the bargain is, no doubt, tiring work; and it leaves little time to pursue programs of benefit to the blind. So what is left for the ACB to do when it wants to parade some results in the *Forum?* What is left is empty bragging. What is left is reporting of achievements, but leaving out the name of the organization responsible and deceitfully adding your own name.

The mockingbird is known for its practice of avoiding the trouble of building a nest by laying its eggs in the nests of other birds. It leaves its chicks to be raised by these other birds. The ACB, of course, has its own nest—a nest built and feathered by the AFB. But the Council has been so occupied by lining and relining its nest that it has produced no eggs. Then it noticed that the Federation's nest was full. The Council decided to go the mockingbird one better. It stole some eggs from our nest, settled down on them, and began to crow.

The NFB shares the benefits of its struggles, and it shares them with all blind people—those who fight along with us and those

who have never heard of us. But it is a little hard when the ACB—out of the most cynical motives—works to retard the progress of the blind and then goes on to claim any progress that we bring about despite them.

We also understand the dilemma faced by the leaders of the ACB. Their constituents in general demand only to be kept out of trouble. But ACB members, as normal people, must from time to time ask for some results from their national staff. The staff has done little they are willing to discuss in public, and nothing of real meaning to the blind, so they trot out our victories and neglect to mention that we are the ones responsible.

This is what they do, but it is not a practice with much honor about it. □

RECIPE OF THE MONTH

by PEGGY COVEY

Peggy Covey is a member-at-large of the National Federation of the Blind of Ohio.

CARROT COOKIES WITH ORANGE-BUTTER ICING

Ingredients

1 cup soft shortening (part butter)
¾ cup sugar
1 cup mashed cooked carrots
2 eggs
2 cups sifted flour
2 teaspoons baking powder
½ teaspoon salt
¾ cup shredded coconut (optional)

Mix together the shortening, sugar, carrots, and eggs. Sift together the rest of the ingredients and add them to your other mixture, stirring the whole recipe together. Drop spoonfuls two inches apart on a lightly greased cookie sheet. Bake eight to ten minutes at 400 degrees, or until no imprint is left when the cookies are touched. This recipe makes four dozen two-inch cookies.

Orange-Butter Icing: Blend together ½ cup soft butter and three cups confectioner's sugar. Stir in three tablespoons cream and 1½ teaspoons vanilla. Then blend in 1½ cups grated orange rind, and frost the cookies. You may omit the vanilla, and replace the cream with orange or lemon juice. □

MONITOR MINIATURES □□□□□□□□

□ A Spanish language edition of the American Issues Forum, "Our 200 Years: Tradition and Renewal," is now available on recorded disc. The National Federation of the Blind, with the cooperation of the National Endowment for the Humanities, recently distributed sets of discs to libraries, schools, and other institutions and individuals across the country. The American Issues Forum outlines for discussion nine topics that have affected American life since our nation's birth. In addition to suggested schedules and methods for approaching the nine issues, the discs present newspaper articles which illuminate various aspects of the topics. Undoubtedly, this project will add immeasurably to the participation by Spanish-speaking blind persons in a nationwide discussion program. If you wish a copy of this material, the records are available upon request from our National Office, 218 Randolph Hotel, Des Moines, Iowa 50309.

□ Mark Sawyer, a Federationist in Morgan City, Louisiana, was the third-ranking graduate of the University of Southwestern Louisiana this last spring. He was also recognized by an award for his scholastic and

extracurricular achievements, presented by Recording for the Blind. Mark was USL student government president and is past president of the NFB's Lafayette chapter.

□ The National Braille Association, formerly of 654-A Godwin Avenue, Midland Park, New Jersey, has sent us a new address. It is: NBA Braille Book Bank, 422 South Clinton Avenue, Rochester, New York 14620. Their new telephone number is (716) 232-7770.

□ Gintautas Burba, of 30 Snell Street, Brockton, Massachusetts 02401, writes that the chess periodical *Castle* will appear quarterly in Braille. The cost is $5 annually, and payment should be sent to Mr. Burba.

□ Ed and Phyllis Foscue report that New Orleans was their fifth NFB Convention. It was the second Convention for their daughter, Janis Cotton; and the second for their grandson, Nick Cotton. Ed is first vice-president of the NFB of Washington and president of the NFB of Seattle. Phyllis is an active Federationist and drives about 15,000 miles a year for people in the movement. Janis is treasurer of the NFB of Seattle, and her three-year-old son Nick is an old NFB hand, since he took his place in an NFB demonstration shortly before he was born.

□ Rosamond Critchley writes that the Greater Springfield (Mass.) Association of the Blind has elected the following officers: Joseph Piela, president; Joseph Mitchell, vice-president; Margaret Judd, secretary; Helen Rowell, treasurer; Fernand Martin, sergeant-at-arms; Anita O'Shea and Harriet Tassinari, members-at-large; and Donald Berrouard, three-year trustee.

□ Glenn Crosby sends us the following news: This fall, college students in Texas are enjoying two major improvements in the reader service program provided by the Texas Commission for the Blind. The amount of money a student can pay to readers has been raised from $120 to $150 per month. And students are no longer limited to the rate of $1.25 per hour; they may now pay whatever rate is necessary—up to the limit of $150 per month. These two improvements are direct results of Federationists in Texas working to improve services for blind people.

□ We are already into the fall of 1977 and approaching the point when all of the programs of the Federation are solely supported by contributions from Federationists and by whatever other gifts and contributions they can bring in. The response this year has been encouraging, but there is still a long way to go. We urge every Federationist to become a member of the pre-authorized check plan (the PAC Plan) and take a direct role in the national activities of the Federation. The work remains to be done and we are the only ones who can or will do it. Every issue of the inkprint *Monitor* contains a PAC card; readers of other editions can get cards from the Treasurer's Office.

□ The annual membership and board meetings of the National Accreditation Council will take place November 14-15, 1977, in Phoenix, Arizona. Federationists should mark the date and plan to attend in numbers to show NAC that we never give up. □

NFB PRE-AUTHORIZED CHECK PLAN. This is a way for you to contribute a set amount to the NFB each month. The amount you pledge will be drawn from your account automatically. On the other side of this card, fill in the amount you want to give each month and the day of the month you want it to be drawn from your account. Sign the card in two places, where the X's are. The rest will be filled in by the NFB Treasurer. Enclose a voided check with the card, and mail it to Richard Edlund, Treasurer, National Federation of the Blind, Box 11185, Kansas City, Kansas 66111. Your bank will send you receipts for your contributions with your regular bank statements. You can increase (or decrease) your monthly payments by filling out a new PAC Plan card and mailing it to the Treasurer. Also, more PAC Plan cards are available from the Treasurer.

INDEMNIFICATION AGREEMENT

To the bank named on the reverse side:

In consideration of your compliance with the request and authorization of the depositor named on the reverse side, the NATIONAL FEDERATION OF THE BLIND will refund to you any amount erroneously paid by you to the National Federation of the Blind on any such check if claim for the amount of such erroneous payment is made by you within twelve months from the date of the check on which such erroneous payment was made.

Authorized in a resolution adopted by the Board Members
of the National Federation of the Blind on November 28, 1974.

THE NATIONAL FEDERATION
OF THE BLIND

BY: _____
Treasurer